



6 May 2003

The Secretary
Senate Economics Legislation Committee
Room SG.64
Parliament House
CANBERRA ACT 2600

Dear Secretary,

Following the Property Council's presentation to the Senate Economics Legislation Committee last week, we attach a supplementary submission that addresses some of the issues raised by the Senators.

Yours sincerely

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PROPERTY
COUNCIL
of Australia



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Submission to the Senate Economics Legislation Committee

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1. Terrorism Is Unpredictable

It is simply impossible to second guess the terrorist mind.

Post September 11 and Bali, Australia cannot be ruled out as a terrorist target.

Accepting that Australia is no longer zero risk, it is the Property Council's contention that possible terrorist priorities within Australia are unpredictable in terms of geographical location, type of target and downstream impact.

Consequently, there is no rationale for quarantining any sector or any part of the country from the task of capitalising the \$300 million required to kick start ARPC.

2. Market Failure in Terrorism Insurance is Recognised Around the World

The US, France, Spain and Germany have become reinsurers of last resort against terrorist activity over the past eighteen months. Many other European countries are moving toward intervention frameworks. They recognise that the Claytons cover on offer provides totally inadequate protection (see initial Property Council Submission).

As mentioned in its report of January 2003, credit rating agency Moody's, like many US banks, began reviewing risk in light of the failure of the US legislature to agree on the form of reinsurance backstop it would offer.

"The major reason Moody's downgraded 11 transactions last year, notwithstanding that some of the assets had at least some terrorism insurance, was that we did not have great confidence that such insurance would be available after another major terrorist attack."

It should be noted that there is still much debate over the efficacy of the US Terrorism Risk Insurance Act (TRIA) finally passed in November 2002 and the impact it will have on financial activity.

The Property Council further notes that the recent submissions of the New South Wales, Queensland and Western Australian Governments to the Committee all support Federal Government intervention in this failed market.

3. Comprehensive Government Reinsurance Can Avert Financial Disaster

September 11 demonstrates that the physical damage from terrorist attack on commercial property has an immeasurable human toll. Without insurance against such unpredictable events, there is also the prospect of widespread financial damage.

On 8 March 2003 the New York Times speculated that, notwithstanding the massive size of the US economy, the inadequacy of the Terrorism Risk Insurance Act and the lack of meaningful commercial cover available meant that another attack could be disastrous.

“Because so few companies have terrorism insurance, an attack like the one on the World Trade Center -- which caused at least \$40 billion in financial losses -- would probably have a much more devastating financial effect today than on Sept. 11.”

Australia is the most urbanized country in the world and more than 70% of Australia’s CBDs are collectively owned by superannuation, retirement and investment funds.

Taking CBDs as an example, without adequate insurance there are very few owners, investors, banks or superannuation funds that would not be made insolvent by the self-insurance costs arising from a wholly or partially destroyed building.

There are disastrous reconstruction, public liability, business interruption, employee entitlement and other costs that accrue immediately to uninsured owners in the event of an attack.

Uninsured tenants in those buildings, some 90% of whom are small businesses, and their individual companies face interrelated reconstruction and compensation costs that would add up to bankruptcy in the absence of terrorism insurance.

Attacks on power, storage, telecommunications or transport infrastructure will have impacts across even greater geographic areas.

Moreover, property and infrastructure assets underpin domestic and global financial systems. Banks need assets against which to guarantee lending finance. As the ABA has indicated to the Committee, the security of property assets is critical to such lending.

The Australian financial markets are relying on government intervention through the ARPC scheme.

4. Industry Support for Terrorism Insurance

At one stage during the Committee hearings it was suggested that parts of the mining and resource sector were opposed to the Bill because they were already self insuring for terrorist incidents. It is the understanding of the Property Council that self-insureds are not affected by the legislation as it currently stands.

If such entities are insured with another party that is not a captive insurance company and they are seeking overseas cover they only have access to Claytons cover, leaving much of their assets exposed.

The Property Council also notes the support for the proposed ARPC by the Australian Industry Group, the peak body for Australia's manufacturing sector.

5. A Non Compulsory Scheme Would Fail in the Australian Context

Having accepted the existence of market failure, Treasury have made it clear that the Australian economy is too small to deal with terrorism insurance market failure without a compulsory scheme.

It is the understanding of the Property Council that the \$300 million ARPC premium target pool would take too long to capitalize effectively without a compulsory scheme.

In the Property Council's view the voluntary U.S. scheme is a failure. It has merely increased premiums with little appreciable improvement in the quality of cover available.

6. A Purely Post Funded Model is Unattractive

All major property investors and financiers are relying on a 1 July start date for cover. Thousands of commercial contracts have been negotiated on this basis. Only ARPC can achieve this time table.

General levies on the population beyond the business community inevitably involve a considerable time delay in implementation and are less equitable than a scheme constructed on a rigorous framework in advance.

Timely implementation aside, the ARPC framework provides for a combined pre and post funding model which has immediate access to a substantial debt facility.

All alternatives for Government intervention involve some degree of contingent liability for the Commonwealth, but none provide the market and industry with the certainty delivered by the ARPC scheme.

7. The ARPC Model Does Not Require a Small Business Cross Subsidy

Property is the productivity platform of the Australian economy.

Small businesses are 90% of the tenant base for commercial properties.

Small business would be dramatically affected by any attack on the nation's factories, shopping centres, commercial office blocks or hotels.

Moreover, Australia's commercial property and infrastructure extends far beyond icon buildings and our retail and industrial complexes.

Telecommunications, energy, transport, and storage infrastructure is a conduit for goods and services across the entire country at government, business, community and residential levels.

Remote and regional areas rely heavily on viable transport (roads, bridges, tunnels, rail), communications (telecommunications, postal), supply (ports, warehouses) and energy (electricity, gas) infrastructure as well as generation and manufacturing facilities in their states.

As the Western Australian Government submission argues,

"if a terrorist act was committed against a major infrastructure project in Western Australia such as the Burrup (which provides a significant amount of power to Western Australia) and wipes out gas production for that period, it could financially destroy businesses that are critical to the delivery of that gas."

8. A Role for The ACCC in the Avoidance of Price Exploitation

Realising that domestic price signals would be dampened under the ARPC model, the Property Council supports the drafting of regulations for ACCC monitoring of the ARPC market for terrorism insurance.

9. Churches

The Property Council supports the efforts of the New South Wales Government in seeking assurances from Treasury with regard to reasonable treatment of places of worship in the ARPC regulations.

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